

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 334

October 2001

REMINDER OF ORDER OF BUSINESS

October

- 1 Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (November 1)] to complete its duties. (IC 6-1.1-17-9(a))
- 8 Columbus Day - Legal Holiday (IC 1-1-9-1)
- 15 Last day to make pension report and payment for third quarter by counties participating in Public Employee's Retirement Fund.
- 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
- 31 Last day to file quarterly unemployment compensation report with the Indiana Employment Security Division.

Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.

Last day Annual Tax Sale can be held. [IC 6-1.1-24-2(a)(8)]

November

- 1 Issue tax sale certificates to County for properties offered in tax sale for two consecutive years and unsold at the 2001 Tax Sale. (IC 6-1.1-24-6)

Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))

Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to the judge's salary during the ensuing calendar year. (IC 33-13-12-7.1(b))

- 7, 8, & 9 County Auditor's Fall Conference - Indianapolis, Indiana

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REMINDER OF ORDER OF BUSINESS

(Continued)

November

- 12 Veterans' Day - Legal Holiday. (IC 1-1-9-1)
- 13 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)
- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 22 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

December

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)

At regular meeting of Board of County Commissioners consideration may be given to appointments of certain personnel and to bids and awards for highway supplies, materials and equipment for 2002.
- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.
- 25 MERRY CHRISTMAS!! Legal Holiday. (IC 1-1-9-1)
- 31 Review year-end duties.

Post and close all records completely and promptly.

The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office, if field examiners or a successor Treasurer are not available to verify the cash count.

Cash Change Funds issued to any county officer whose term expires must be returned to the County General Fund.

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CONFLICT OF INTEREST

IC 35-44-1-3 states: "(a) A public servant who knowingly or intentionally:

- (1) has a pecuniary interest in; or
- (2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

(b) This section does not prohibit a public servant from receiving compensation for:

- (1) services provided as a public servant; or
- (2) expenses incurred by the public servant as provided by law.

(c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

(1) If the:

(A) public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;

(B) functions and duties performed by the public servant for the governmental entity are unrelated to the contract or purchase; and

(C) public servant makes a disclosure under subsection (d) (1) through (d) (6);

(d) A disclosure required by this section must:

- (1) be in writing;
- (2) describe the contract or purchase to be made by the governmental entity;
- (3) describe the pecuniary interest that the public servant has in the contract or purchase;
- (4) be affirmed under penalty of perjury;
- (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase;
- (6) be filed within fifteen (15) days after final action on the contract or purchase with:
 - (A) the State Board of Accounts; and
 - (B) if the governmental entity is a governmental entity other than the state or a state supported college or university, with the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and
- (7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant..".

If any situations exist in your county which might be in conflict with this statute, we suggest you present your questions to the attorney who represents the county for written guidance. In view of the position of public responsibility in which county employees find themselves, any question of conflict of interest should be avoided.

PURCHASES

The Public Purchases Law, IC 5-22, governs the purchasing by local governmental units. Its major provisions are as follows. You should review IC 5-22 for the complete requirements and special purchasing options.

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PURCHASES - (Continued)

GENERAL PROVISIONS

Definitions

IC 5-22-2 contains definitions applicable to the public purchasing statutes. Selected definitions are presented in this section and throughout this chapter.

“Policy” refers to a governmental body’s or purchasing agency’s written statement of purchasing procedure or substantive purchasing purposes that does not have the force and effect of law. [IC 5-22-2-21]

“Public Funds” means money derived from the revenue sources of the governmental body and deposited into the general or a special fund of the governmental body. [IC 5-22-2-23(a)]

“Purchase” includes buy, procure, rent, lease, or otherwise acquire. The term includes the following activities: description of requirements; solicitation or selection of sources; preparation and award of contract; all phases of contract administration; and all functions that pertain to purchasing. [IC 5-22-2-24]

“Purchasing Agency” means a governmental body that is authorized to enter into contracts by this article, rules adopted under this article, or by another law.[IC 5-22-2-25]

“Purchasing Agent” means an individual authorized by a purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency. [IC 5-22-2-26]

“Rule” refers to an order, an ordinance, a resolution, or another procedure by which the governmental body is authorized by law to adopt a policy that has the force and effect of law. [IC 5-22-2-29]

“Supplies” means any property. The term includes equipment, goods, and materials. The term does not include an interest in real property. [IC 5-22-2-38]

Rules and Written Policies

A governmental body may adopt rules to regulate purchases of the governmental body which may supplement IC 5-22 and not be inconsistent with IC 5-22.

The purchasing agency of a governmental body may establish written policies for purchases made by the purchasing agency. The written policies may apply to all purchases generally or to a specific purchase as stated in the solicitation for the purchase. A written policy may supplement this article or a rule adopted by the purchasing agency’s governmental body and not be inconsistent with this article or a rule adopted by the purchasing agency’s governmental body. [IC 5-22-3-3]

COMPETITIVE BIDDING

A purchasing agent shall follow competitive bidding procedures in awarding a contract for supplies, unless another purchasing method is required or authorized by IC 5-22. [IC 5-22-7-1]

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PURCHASES - (Continued)

Invitation for Bids

A purchasing agent shall issue an invitation for bids, as defined in IC 5-22-2-14. Pursuant to IC 5-22-7-2, an invitation for bids must include the following:

1. A purchase description. IC 5-22-2-27 defines a "purchase description" as the words used in a solicitation to describe the supplies or services to be purchased. The term includes specifications attached to, or made a part of, the solicitation.
2. All contractual terms and conditions that apply to the purchase.
3. A statement of the evaluation criteria that will be used, including any of the following: inspection; testing; quality; workmanship; delivery; suitability for a particular purpose; and the requirement imposed under IC 5-22-3-5 regarding offers submitted by trusts.

Evaluation criteria that will affect the bid price and be considered in the evaluation for an award must be objectively measurable. [IC 5-22-7-3]

Only criteria specified in the invitation for bids may be used in bid evaluation. [IC 5-22-7-4]

4. The time and place for opening the bids.
5. A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with the rules or policies of the governmental body.
6. A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

Notice of Invitation for Bids

The purchasing agency shall give notice of the invitation for bids in a manner required by IC 5-3-1.] [IC 5-22-7-5]

Public Opening of Bids

The purchasing agency shall open bids publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. [IC 5-22-7-6]

Acceptance and Evaluation of Bids

Bids must be unconditionally accepted without alteration or correction, except as provided in IC 5-22-7-11 through IC 5-22-7-13 and evaluated based on the requirements provided in the invitation for bids. [IC 5-22-7-7]

Changes in Bid Prices. A purchasing agency may not permit changes in bid prices or other provisions of bids prejudicial to the interest of the governmental body or fair competition after bid opening. [IC 5-22-7-11]

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PURCHASES - (Continued)

Acceptance and Evaluation of Bids - (Continued)

Additional Terms or Items. If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the purchasing agent shall treat the additional material as a proposal for addition to the contract and may do any of the following:

1. Declare the bidder nonresponsive.
2. Permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria provided in the invitation for bids.
3. Accept any of the proposed additions to the contract, subject to IC 5-22-7-13. [IC 5-22-7-12]

Contract Additions. The purchasing agent may not accept proposed additions to the contract that are prejudicial to the interest of the governmental body or fair competition. [IC 5-22-7-13]

Invitation for Bid Requirements. A decision of the purchasing agent to permit a change to the requirements of the invitation for bids must be supported by a written determination by the purchasing agency. [IC 5-22-7-13]

Awarding of Contract

A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder. [IC 5-22-7-8]

Erroneous Bid or Mistake

The governmental body may adopt rules or establish policies to allow any of the following:

1. Correction or withdrawal of inadvertently erroneous bids before or after award.
2. Cancellation of awards or contracts based on a mistake described in subdivision (1).

Except as provided in rule or policy, a purchasing agency must make a written decision to permit the correction or withdrawal of a bid or cancel awards or contracts based on bid mistakes. [IC 5-22-7-10]

Maintenance of Information by Purchasing Agency

The purchasing agency shall maintain the following information:

1. The name of each bidder.
2. The amount of each bid.
3. Other information required by this article and rules adopted under this article.

This information is subject to public inspection after each contract award. [IC 5-22-7-9]

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PURCHASES - (Continued)

SPECIFICATIONS

General Provisions

Economy. A specification must promote overall economy for the purposes intended and encourage competition in satisfying the governmental body's needs. [IC 5-22-5-3]

Rules and Policies. A governmental body may adopt rules or establish policies for the preparation, maintenance, and content of specifications. Rules or policies may include a description of requirements for inspecting, testing, or preparing an item for delivery. [IC 5-22-5-1]

Purchasing Agent Responsibility. A purchasing agent shall prepare, issue, revise, maintain, and monitor the use of specifications. [IC 5-22-5-2]

File of Specifications. The purchasing agency shall maintain an indexed file of specifications prepared by or under the authority of its purchasing agents.[IC 5-22-5-4]

Request for Specifications

A request for specifications may be issued if the purchasing agent makes a written determination that the development of specifications by the governmental body is not feasible and the executive of the governmental body approves the use of a request for specifications under IC 5-22-5-5.5. [IC 5-22-5-5]

A request for specifications must include the following:

1. Factors or criteria that will be used in evaluating the specifications.
2. A statement concerning the relative importance of evaluation factors.
3. A statement concerning whether discussions may be conducted with persons proposing specifications to clarify the specification requirements. [IC 5-22-5-5]

Notice

The purchasing agent shall give notice of the request for specifications under IC 5-3-1. [IC 5-22-5-5]

Discussion and Revision of Specifications

As provided in the request for specifications, the purchasing agent may discuss proposed specifications with persons proposing specifications to clarify specification requirements. Persons proposing specifications must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposed specifications. [IC 5-22-5-5]

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PURCHASES - (Continued)

REQUEST FOR PROPOSALS

When a purchasing agent makes a written determination that the use of competitive sealed bidding is either not practicable or not advantageous to the governmental body, the purchasing agent may award a contract using the request for proposals process under IC 5-22-9 instead of competitive sealed bidding under IC 5-22-7. [IC 5-22-9-1]

Rules and Policies

The governmental body may provide by rule or policy that it is either not practicable or not advantageous to the governmental body to purchase specified types of supplies by competitive sealed bidding and receiving proposals is the preferred method for purchase of that type of supply. [IC 5-22-9-8]

Content of Request for Proposals

The purchasing agent shall solicit proposals through a request for proposals, which must include the following:

1. The factors or criteria that will be used in evaluating the proposals.
2. A statement concerning the relative importance of price and the other evaluation factors.
3. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with the rules of the governmental body.
4. A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award.
[IC 5-22-9-2]

The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals. [IC 5-22-9-10]

Notice

The purchasing agency shall give public notice of the request for proposals in the manner required by IC 5-3-1. [IC 5-22-9-3]

Opening of Proposals

Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. [IC 5-22-9-4]

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PURCHASES - (Continued)

Discussion and Revision of Proposals

As provided in the request for proposals or under the rules or policies of the governmental body, discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. [IC 5-22-9-6]

Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions with an offeror, information derived from proposals submitted by competing offerors may not be disclosed. [IC 5-22-9-9]

Award

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

If provided in the request for proposals, award may be made to more than one offeror whose proposals are determined in writing to be advantageous to the governmental body, taking into consideration price and other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

Register of Proposals

A register of proposals must be prepared and open for public inspection after contract award. The register of proposals must contain the following:

1. A copy of the request proposals.
2. A list of all persons to whom copies of the request for proposals were given.
3. A list of all proposals received, which must include all the following:
 - a. The names and addresses of all offerors.
 - b. The dollar amount of each offer.
 - c. The name of the successful offeror and the dollar amount of that offeror's offer.
4. The basis on which the award was made.
5. The entire contents of the contract file except for proprietary information included with an offer, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the request for proposals. [IC 5-22-9-5]

SMALL PURCHASES

General Provisions

The small purchase chapter, IC 5-22-8, applies only to a purchase expected by the purchasing agent to be less than \$75,000. [IC 5-22-8-1]

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PURCHASES - (Continued)

General Provisions - (Continued)

Purchase requirements may not be artificially divided so as to constitute a small purchase under IC 5-22-8. [IC 5-22-8-1]

Quotes

Solicitation of Quotes. If the purchasing agent expects the purchase to be at least \$25,000 and not more than \$75,000, the purchasing agent may purchase supplies by inviting quotes from at least three persons known to deal in the lines or classes of supplies to be purchased. [IC 5-22-8-3]

The purchasing agent shall mail an invitation to quote at least seven days before the time fixed for receiving quotes. [IC 5-22-8-3]

Award of Contract. If the purchasing agent receives a satisfactory quote, the purchasing agent shall award a contract to the lowest responsible and responsive offeror for each line or class of supplies required. [IC 5-22-8-3]

Rejection of Quotes. The purchasing agent may reject all quotes. [IC 5-22-8-3]

No Satisfactory Quote Received. If the purchasing agent does not receive a quote from a responsible and responsive offeror, the purchasing agent may purchase the supplies under IC 5-22-10-10. [IC 5-22-8-3]

Small Purchase Policies

If the purchasing agent expects the purchase to be less than \$25,000, the purchasing agent may make a purchase under small purchase policies established by the purchasing agency or under rules adopted by the governmental body. [IC 5-22-8-2]

OFFICIAL BONDS

Indiana Code 5-4-1-18 provides that the following county and township officers and employees shall file individual surety bonds:

1. Auditors, treasurers, recorders, surveyors, sheriffs, coroners, assessors and clerks.
2. Township trustees and assessors
3. Those employees directed to file an individual bond by the fiscal body of the county.

The fiscal body of the county or township may, by ordinance, authorize a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the faithful performance of all employees, commission members, and persons acting on behalf of the county or township including those listed above.

The fiscal body of the governmental unit shall fix the amount of the bond of the county treasurers, sheriffs, circuit court clerks and conservancy district financial clerks as follows:

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OFFICIAL BONDS - (Continued)

1. The amount should equal fifteen thousand dollars (\$15,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond provided.

2. The amount of the bond may not be less than fifteen thousand dollars (\$15,000) nor more than three hundred thousand dollars (\$300,000).

The county council shall fix the amount of the county auditor's bond at not less than fifteen thousand dollars (\$15,000).

The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than eight thousand five hundred dollars (\$8,500).

An official bond of officers shall contain written approval as follows:

1. Sheriff, coroner, recorder, auditor, treasurer, and clerk of the circuit court, by at least a majority of the board of county commissioners or in a county having a consolidated city, by the mayor of the consolidated city.

2. County assessor, township trustee, and township assessor, by the county auditor.

3. Other county officers required to give bonds, by the clerk of the circuit court unless otherwise specified.

FIREARMS TRAINING FUND

The law enforcement agency which accepts an application for handgun license shall collect a \$10 application fee, \$5 of which shall be refunded if the license is not issued. The fee shall be:

(1) deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund; and

(2) used by the agency for the purpose of:

(A) training law enforcement officers in the proper use of firearms or other law enforcement duties;
or

(B) purchasing for the law enforcement officers employed by the law enforcement agency firearms, or firearm related equipment, or both, (IC 35-47-2-3)

These fees should be remitted to the county auditor by the county sheriff at the end of each month and quietused into a firearms training fund or other appropriate training activities fund.

In addition to the application fee, the fee for a qualified license shall be \$5 and the fee for an unlimited license shall be \$15. These fees shall be deposited with the Superintendent of the Indiana State Police who shall deposit them with the Treasurer of State.

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HOME RULE

All counties have home rule powers as set out in IC 36-1-3. The following should be considered when exercising such powers.

It is desirable to look at the limitations, both expressed and implied, that have been placed on the scope of Home Rule powers. As noted earlier, Home Rule was never intended to give local governments a completely free hand to do whatever they want, and there are definite rules and limits that must be observed.

Expressed Limits of Home Rule

The Home Rule law contains a number of expressed provisions that preclude, limit, or condition the exercise of powers under Home Rule.

First, there are two general limits. A unit may not do anything that is:

- (1) expressly denied by the state constitution or state law (for example, a unit could not prescribe a penalty for an action that violates state law or impose jail time as a penalty for violation of a local ordinance); or
- (2) expressly granted to another entity (counties, for instance could not take over functions or usurp powers vested by law in municipalities, township, etc.

In addition, there are other powers of a more specific character that units still may not exercise in the absence of authorization by state law. These include:

- (1) imposing any tax other than those authorized by law;
- (2) limiting or otherwise conditioning a unit's civil liability;
- (3) regulating private civil relationships;
- (4) imposing duties on other governmental units;
- (5) imposing a license fee greater than that reasonable related to the administrative cost of exercising a regulatory power;
- (6) imposing a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services;
- (7) regulating activities that are already regulated by the state;
- (8) prescribing a penalty for conduct constituting a crime or infraction under statute;
- (9) prescribing a penalty for imprisonment for an ordinance violation;
- (10) prescribing a penalty of a fine of more than \$10,000 for a violation of an ordinance or a regulation concerning air emissions or more than \$2,500 for any other ordinance violation;
- (11) investing money, except as expressly granted by statute;
- (12) ordering or conducting an election, except as expressly granted by statute.

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HOME RULE - (Continued)

Implicit Limitations of Home Rules

In addition to those limitations that are expressed in the Home Rule law, there are also a number of important considerations that will further limit the scope and applicability of Home Rule powers. These limits are not made explicit in the Home Rule law, but may be applied from examining other statutes and principles of law. These implied limitations include:

- (1) a governmental unit may not exercise powers outside its normal territorial jurisdiction, except as specifically authorized by law or through interlocal agreement; and
- (2) restrictions inherent in the federal laws, regulations, and constitution must be observed.

Procedures for Utilizing Home Rule

The ability to use Home Rule properly is not only important in terms of allowing government flexibility as needed, but is even more important now that many of the state laws which previously provided permissive powers to local units have been repealed. This is especially true of those laws which constituted "class" legislation in the past. Therefore, aside from providing additional powers, local units will need to invoke Home Rule authority in passing local ordinances to continue powers or procedures formerly granted by specific state statutes.

Who Can Utilize Home Rule Powers?

Home Rule law confers these powers to all units.

When Should Home Rule Powers Be Used?

A unit may exercise its Home Rule powers whenever it is "necessary or desirable" to exercise any power, perform any function, provide any service -- and create the structural elements or procedures to do so-- and;

- (1) the laws and constitutions of the state and federal governments do not expressly or implicitly prohibit or preempt it from doing so; and
- (2) state law does not already provide for exercising the power, providing the service, or performing the function, or state law does provide for the foregoing but does not mandate any procedures to follow in implementing it.

How Are The Home Rule Powers Exercised?

A question that one often hears when talking about Home Rule is, "Well that all sounds very nice - but how do we adopt Home Rule?" The answer to this question is very simple - you don't adopt Home Rule. Home Rule represents both a policy of the state and a particular method more efficiently conveying powers to local governments. Home Rule is not like a "local option tax" that requires further action to become effective within a particular local jurisdiction.

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HOME RULE - (Continued)

How are the Home Rule Powers Exercised? - (Continued)

Home Rule has already been conferred upon local units by the General Assembly as a matter of state law. No further action is necessary on the unit's part in this respect.

Local action is required only when a unit wants to do some particular things under Home Rule authority. A unit doesn't "adopt Home Rule" but it does adopt specific powers that it wants to exercise. The formal ordinance procedure is required to accomplish this end.

An error to which Home Rule has been subject in the past is the impression that it confers powers on local officials and bodies individually. Occasionally individual officials wanting to preform some function and seeing no state law prohibiting them from doing so have acted with the idea that "if anybody gripes, I'll say its Home Rule". Home Rule does not work that way. Home rule is essentially a legislative power -- a form of limited legislative discretion delegated by the state legislature to the appropriate local legislative bodies.

In essence, local ordinances substitute for state laws in the exercise of Home Rule powers. The bodies that must pass the appropriate authorizing ordinances are:

- (1) in a town, the town council
- (2) in a city, the city council
- (3) in a county having consolidated city or two or more second class cities, by the legislative body of the county; or
- (4) in any other county, the board of county commissioners.

The ordinance authorizing the exercise of a new power, the performance of a new function, or the provisions of a new service under the authority of the Home Rule law should be adopted according to the same rules and procedures generally applicable to the adoption of ordinances by the local legislative body. Although it is not a specific requirement, it would probably be advisable to state in the preamble or digest of the ordinance (not in the body of the ordinance itself) that Home Rule powers vested in the unit's government by IC 36-1-3 are being exercised so that the source of authority will be clear in the event that the action is questioned.

INFRACTION JUDGEMENT FUND

IC 34-28-5-5 provides that judgement for violations of statutes defining infractions be deposited in the state general fund.

The Auditor should establish an Infraction Judgement Fund to quietus such judgements into when remitted by the courts. The balance in this fund will be paid and reported to the state twice a year with the Settlement Sheet.

Please do not commingle Infraction Judgement Fees with State Fines and Forfeitures.

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DEFERRAL PROGRAM

The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring infraction and ordinance violation cases actions brought under IC 34-28-5-1. Actions may be deferred if:

- (1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;
- (2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee of up to \$52 and monthly user's fee of up to \$10 set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-19-5-2(e);
- (3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;
- (4) the defendant in the action agrees to pay court costs of twenty-five dollars(\$25) to the clerk of the court if the action involves a moving traffic offense (as defined in IC 9-13-2-110); and
- (5) the agreement if filed in the court in which the action is brought.

When a defendant complies with the terms of an agreement filed, the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action the court shall dismiss the action. An action dismissed may not be refiled.

The aforementioned \$25 court costs shall be distributed as follows:

<u>Total Court Costs</u>	<u>Due State</u>	<u>Due County</u>	<u>Due City And Town</u>
\$25.00	\$17.50	\$6.75	\$.75

LOCAL ROAD AND STREET ACCOUNT-APPROVED USES OF DISTRIBUTIONS BY CITIES AND TOWNS

IC 8-14-2-5 states: "Money from the local road and street account shall be used exclusively by cities, towns, and counties for:

1. engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems;
2. the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects;
3. any local costs required to undertake a recreational or reservoir road project under IC 8-23-5; or
4. the purchase, rental or repair of highway equipment."

It appears legislative intent is for local road and street account distributions are to be used only for direct expenses incurred in the construction, reconstruction, or maintenance or arterial and local roads and streets. This would prohibit the use of such funds for building buildings or for such indirect costs as administrative salaries or supplies, goods, or materials not used directly for one of the aforementioned purposes.

Local road and street account distributions must be budgeted and appropriated prior to expenditure in the same manner as properly tax revenues.

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COURTS - LATE PAYMENT FEES

A court may adopt a local rule to impose a late payment fee on defendants paying court costs, fees, fines and civil penalties after the due dates set by the court for payment of such amounts. The clerk of a court that adopts a local rule imposing a late payment fee shall collect a late payment fee of twenty - five dollars (\$25) from the defendant. (IC 33-19-6-20)

The clerk of the court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected. The county auditor shall deposit fees distributed by the clerk as follows:

1. If directed by an ordinance of the county council, 40% to the clerk's record perpetuation fund and 60% to the county general fund.
2. If no ordinance is adopted by the county council, 100% to the county general fund. (IC 33-19-7-1)

CUMULATIVE CAPITAL IMPROVEMENT FUND

Public Law 41, Acts of 2001, amended IC 36-9-16-3 to allow counties with a property tax levy for the cumulative capital improvement fund to also use such revenue:

1. To purchase, lease, upgrade, maintain, or repair one (1) or more of the following:
 - A. Computer Hardware.
 - B. Computer Software.
 - C. Wiring and Computer networks.
 - D. Communications access systems used to connect with computer networks or electronic gateways.
2. To pay for the service of full-time or part-time computer maintenance employees.
3. To conduct nonrecurring in-service technology training of unit employees.

Please note that if a county has adopted the Cumulative Capital Development (CCD) Fund under IC 36-9-14.5 and your ordinance establishing such fund lists IC 36-9-16-3 as a permitted use of the fund, then the CCD fund may also be used for the aforementioned uses.

RAINY DAY FUND

A county may establish a rainy day fund to receive transfers of unused and unencumbered funds under IC 36-1-8-5.

IC 36-1-8-5 (b) states that whenever the purpose of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the county shall order the balance of that fund to be transferred to the general fund or rainy day fund of the county as provided in IC 36-1-8-5.1, unless a statute provides that it be transferred otherwise.

The rainy day fund is subject to the same appropriation process as other funds that receive tax money. Before making an appropriation from the rainy day fund, the fiscal body shall make a finding that the proposed use of the rainy day fund is consistent with the intent of the fund.

In any fiscal year, a county may transfer not more than ten percent (10%) of the county's total budget for that fiscal year to the rainy day fund.

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RAINY DAY FUND - (Continued)

The State Board of Tax Commissioners may not reduce the actual or maximum permissible levy of a county as a result of a balance in the rainy day fund of the political subdivision.

DESTRUCTION OF CANCELED BONDS AND COUPONS

A bank serves as trustee for municipal bond issues. They requested our audit position regarding providing issuers with a written detailed disposal document instead of returning the canceled bonds and coupons. The following is our response to their question.

Statutory authorization and procedures to be followed in the destruction of public records may be found at Indiana Code 5-15-6. In reviewing this statute, we find no authorization for use of cremation certificates.

With the increased use of registered bonds we have taken the following audit position. Assuming there is no requirement in the bond ordinance that canceled bonds and coupons must be returned to the issuing agency, the State Board of Accounts will not take audit exception if the following conditions are followed. The Trustee provides a properly executed cremation certificate to the issuer clearly listing the individual bonds and coupons destroyed, the date of destruction, and a proviso indemnifying the issuer if the listed bonds and coupons are ever presented a second time for redemption.

PROTECTIVE ORDERS

There had been much confusion over the proper charge for protective orders, including confusion in our office.

After more review of the applicable laws, discussion, and based upon the new legislation passed this last session, the charge for protective orders will be either \$0 or \$104. The statute that allowed for a \$35 fee has been repealed.

We apologize for any inconvenience that you may have incurred.

CHECKS TO THE ATTORNEY GENERAL

Checks sent to the Attorney General by clerks of the circuit court should be made payable to the Attorney General and not to individual attorneys working for the Attorney General. Also, these checks need to be mailed to the Attorney General's office and not to the personal residence of the staff attorney.

Consequently, if this procedure is followed, there would be no need for the clerk to receive a W-9 from the Attorney General or to issue 1099's to these attorneys.

Questions and Answers for the Clerks Annual Conference

Question #1: What do we charge for protective orders? Do we wait for the judge to order court costs?

Answer #1: You should charge either \$0 or \$104. This is different than what the answer was at the June Conference and at the district meetings, because back then there also was an option of \$35. However, that option was repealed leaving only \$0 and \$104. Please note this change.

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Question #2: May the clerk charge for transcript copies or do these copies have to be provided free of charge - see page 8 rule 12B in seminars for trial court and clerk staff manual?

Answer #2: Yes, you may charge for these copies based upon the same fee you charge for other copies in your office.

Question #3: If the clerk copies documents for the appendix, does the clerk do a clerk's certificate of certification?

Answer #3: No

Question #4: When a judgement is rendered against the parents (in a JD case) to reimburse the county for child placement, does this judgement go in a judgement book for public viewing, title researches to note?

Answer #4: Yes, in the parents name.

Question #5: \$25.00 late payment fee, please explain.

Answer #5: If the defendant fails to pay the fees on certain cases, then the court by rule can impose this late fee. When this fee is paid by the defendant and the county council has adopted an ordinance then 40% of the late fee will go to the clerk's perpetuation fund and 60% will go to the county general fund. If the council does not adopt an ordinance then all of the fee goes to the county general fund.

Question #6: How do you keep an address of a person filing a protective order from being accessible to the public, when your voter list is on a public terminal?

Answer #6: You put the address on a confidential form in the file so it is not disclosed. The protected person can register to vote without disclosing their address through the Attorney General's office.

Question #7: Do you collect the \$4.00 on a seat belt violation that has no court costs?

Answer #7: No, because the seat belt violation is a judgement and these new fees are added to court costs.

Question #8: Does the \$4.00 records fee also pertain to diversion and/or deferral fees?

Answer #8: No, again because these fees are not court costs so therefore, you should not add the new \$4 fees.

Question #9: 1099 for IRS, will the State Board of Accounts state whether the Auditor or Clerk is responsible for issuing the 1099 to the attorney?

Answer #9: Clerk

Question #10: BMV - info on how they want different forms filled out. Booklet or web site address. Faxing - why some offices can and others are told not to. Why they tell defendants we did not fax their info when we are not supposed to.

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Answer #10: You need to contact the BMV to answer these questions.

Question #11: What or if there is a retention on tax cases that has a order issuing a tax deed? If so should this case be micro filmed? The office is being overloaded. Went from 150 cases to 400 a month, running out of space?

Answer #11: You need to contact State Court Administration to answer this question.

Question #12: Closing procedures on probate cases which are filed as "Probate of Wills only?"

Answer #12: See answer #11.

Question #13: Mental health records - How should they be closed out? One court says they should be closed with commitment order signed, the other says they should remain open.

Answer #13: You need to contact either State Court Administration or FSSA - Mental Health to answer this question.

Question #14: Please clarify how we are able to handle the upcoming document storage fee and the automated record keeping fee. Is this collected with the filing fee? Or is this assessed by the court?

Answer #14: These fees are to be collected with the filing fee but obviously, may be assessed by the court.

Question #15: Subject is arrested and bonds out of jail. Cash bond is deposited into the Clerks Trust account. Charges are either not filed at all, or possibly dismissed. Can the bond money check be made out to the defendant and the person that posted the bond? Is there a law that states we have to return the bond money to the defendant? Or is it all in the wording of the bond sheet?

Answer #15: IC 35-33-8-3.2(b), within 30 days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining to the defendant. As a general rule, the refund would go to the payor if different than the defendant.

Question #16: Can a clerk from one county go to another county and marry a couple?

Answer #16: Yes

Question #17: Explain how to figure garnishment amount? Any retention schedules for Isets - Daily reports etc..?

Answer #17: Garnishment law is IC 24-4.5-5-105. There are specific rules on how much can be garnished so review this law prior to garnishing any wages. ISETS records are on the state retention schedule.

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Question #18: Someone from the commission to discuss limited storage space, reason for microfilming - retention schedule and most importantly - procedures for destruction and faster reply options so can destroy files and make room for more files with the number of records now processed!

Answer #18: You can only destroy records once they have been approved to be destroyed by your local public records commission or by following the retention schedule. Contact the Commission on Public Records for more information on preservation of records and the destruction of records.

Question #19: With the cost of certified mail going up so much it now takes almost seven dollars to serve a summons or citation by certified mail. Is there any way we can tax this fee as costs? In small claims especially, it can cost the county more to mail summons than it receives! Could the judges make a court rule to help?

Answer #19: IC 33-19-3-5 says that court costs include the service of process by certified mail. No fees can be created except for those set by statute.

Question #20: What about the new forms for probate that are supposed to change July 1st? What types of tickets (infractions) do you not send to In BMV? Underage tobacco? Littering tickets? In this age of computers - How long do you keep the paper infraction tickets after they are paid?

Answer #20: We assume you mean the affidavit the State Department of Revenue is to prescribe. You should contact them for more information. Need to contact the BMV for the question regarding tickets to them. And finally you follow your retention schedule or fill out a PR1 to destroy the tickets.

Question #21: What is the \$2.00 document storage fee and also the clerks record perpetuation fund?

Answer #21: The document storage fee is the new fee that you receive on all filings. This fee is to go to the Clerk's Record Perpetuation Fund which can be used for the preservation of records or the improvement of the Record keeping System.

Question #22: When judgement is rendered against the state (road widening project, etc), does the clerk enter this judgement in the judgement book? If so, how does the judgement ever get released? Normally, the plaintiff (in this case the state) signs a release. Do we send a relief with the order to the defendant?

Answer #22: Yes, you enter this in the judgement book and the respondent will sign the release when payment is made.

Question #23: When a juvenile is ordered to pay restitution, does this judgement go in the judgment book?

Answer #23: This does not go on the book unless ordered by the court.

Question #24: I received a form from SBA that asks me to respond to an A-133 audit report. I was given a sample county response to the finding to place on my letterhead to FSSA. I was given a sample memo to give SBA. I was told this was not a fault of our county but a problem with a federal audit that was done on 10 counties in the state. I am told that all counties will be wrote up and asked to do this. I have checked with other clerks who are not aware of this. Why am I being wrote up and not the state? Is the information I was given not given to all?

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Questions and Answers for the Clerks Annual Conference - (Continued)

Answer #24: The information you were given is correct. Some counties may not have had their audits completed therefore are not aware of it. All counties will be treated equally when it comes to ISETS findings.

Questions and Answers from the Treasurer's Annual Conference

Question #1: What is happening with mobile homes. They passed the law that they can file homestead and mortgage exemptions. But, no one seems to know how these people file for these exceptions. Doesn't this need to be done by Jan 15, 2002 to be applied to 2002 taxes.

Answer #1: You need to contact the State Tax Board for the answer to this question.

Question #2: Cum Cap - Bill that amends IC 36-9-16-3. Does this mean the county council can take our Systems Administration employees from County General Fund to Cum Cap Fund for their budget?

Answer #2: Yes, our audit position would be that these positions would now be allowed to be paid from the Cum Cap Fund.

Question #3: Tax sale - If an individual has a parcel go up for tax sale and is sold can any surplus be applied to a bad check the county is holding? This check was unrelated to taxation.

Answer #3: Under the new law, there is no provision for the tax sale surplus to be used in this manner.

Question #4: Do we certify personal property that is for the penalty only?

Answer #4: Yes, any delinquencies on the tax duplicate should be certified for judgement.

Question #5: On the Tax Sale letter written from Marion Co why are money orders not accepted?

Answer #5: Because money orders can have a stop payment put on them so the county has decided not to accept money orders.

Question #6: In paying other taxes from tax sale surplus, is there an order in which to pay Real Estate - Personal - Demands or can you apply to demands first to clear those up?

Answer #6: Yes, there is an order. It should go to Personal Property then to Real Property and then to Personal Property from another county.

Question #7: What if the 20% penalty for innkeepers tax has not been charged in the past? Should they be notified by letter before charging or just charge them?

Answer #7: This would be your choice. The statute doesn't address this. Obviously, the county needs to start adding the penalty but if you feel it would be wise to notify first then that is your decision to make.

Question #8: Must a title be presented to give a mobile home permit when only moving mobile home to different township in same country?

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Answer #8: Not according to statute. It only states that taxes must be paid.

Question #9: Can the moving permits for MH be faxed? There are a few counties that charge a fee for MH permits. - What IC allows this charge?

Answer #9: We see nothing in statute that would prohibit the permit being faxed. If a fee is charged then it would have to be by Home Rule Ordinance under IC 36-1-3.

Question #10: Do we give lien buyer a paid receipt on tax sale day for any properties that were paid with "surplus"(overpaid)? If so, and redeemed, what monies do they get back on that?

Answer #10: Yes, they would receive a receipt. They would receive back 110% or 115% of the minimum bid, amount by which purchase price exceeds the minimum bid plus 10%, subsequent taxes paid plus 10%, and attorney fees, costs of giving notice, and title search.

Question #11: When a property sells at tax sale and part of the purchase price is applied to other delinquent taxes, how does this figure into the redemption process? Does the purchaser get this money back?

Answer #11: Yes, it is a part of the redemption amount and the purchaser will get the money back.

Question #12: If a mobile home is on real estate, do the May and November taxes have to be paid before a permit can be issued? If so what is the IC code for this? This may not be the main home on this real estate parcel.

Answer #12: This is an uncertain area again when we talk about what is due and when it is due and the fact the mobile home is assessed as real property vs. assessed as personal property. It would appear that the November taxes should be collected. The code on this is IC 6-1.1-7-10.

Question #13: I keep hearing a difference of 30-60 days after demand notice being sent to clerk. Is it 30 or 60 days before certifying?

Answer #13: 30 days.

Question #14: A sheriff's sale was held last week, it was purchased by an individual. As treasurer, I was there, told them taxes were delinquent and would be in our Sept. tax sale. I seriously doubt the mortgage company gets the taxes paid by tax sale date. If another person buys it at the tax sale what happens?

Answer #14: The tax sale purchaser will have a preferred lien and the purchaser at the sheriff's sale will be out the property.

Question #15: Re: Liquor Permits - Permit and personal property, in the name of Smith and Jones Bar. Real estate is in the name of John Smith and Bob Jones - do the real estate taxes have to be paid before the clearance is signed? (There seem to be some confusion about this).

Answer #15: The applicant must pay all taxes under IC 6-1.1 which will include both real estate taxes and personal property taxes. In this case, real estate of the tavern in both names will have to be paid. The real estate taxes on their personal residences would not.

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Answer #15: The applicant must pay all taxes under IC 6-1.1 which will include both real estate taxes and personal property taxes. In this case, real estate of the tavern in both names will have to be paid. The real estate taxes on their personal residences would not.

Question #16: If a request for renewal of liquor license requested in Jan. or Feb., what taxes need to be paid? Since we do not yet know what the current years taxes will be?

Answer #16: This question needs more research before we can answer it. We will include this answer in future bulletins.

Question #17: Liquor License in the name of Pizza Hut - Real Estate owed by John Doe (where Pizza Hut is). I, at the present, require John Doe to have taxes current. Is this correct?

Answer #17: Yes, this is the correct procedure.

Question #18: Who's responsibility is it to balance the excise sheets (registration for townships)? If auditor, do they know? Why would assessor do it?

Answer #18: The auditor would be responsible to do this and yes they know that. Some counties have the assessor do it because they are familiar with addresses and where people live through the assessment process so it makes it easier for them to determine if excise tax is in the proper tax district.

Question #19: Is there a specific cut off date for excise to be settled and transferred each May or Nov? Our auditor cuts off in March or April. Should it go into May if we haven't settled yet?

Answer #19: No, there is no specific cutoff date that must be used. Just be consistent with both the Spring and Fall dates.

Question #20: If a mortgage company requests a tax bill, but uses a key number that does not belong to one of their customers and the taxpayer does not get a tax bill like they should have, who is responsible for the penalty?

Answer #20: The penalty is added to the parcel. It is for the taxpayer and the mortgage company to settle who will pay that penalty. All you know or care is that the penalty is due by somebody.

Question #21: When opening an investment account approved under IC 5-13 that does not have checking, does the Co. Auditor have to be a co-account holder with the treasurer?

Answer #21: No. Law requires co-signatories on accounts that checks will be drawn from. The county auditor is not for example, on any of the CD's.

Question #22: Can we charge for a duplicate ("C" Copy) bill if we already had an ordinance to do so?

Answer #22: Yes, "C" copy is considered a copy of an original record and therefore you charge per your ordinance.

Question #23: My bank is going to check images rather than returning my canceled checks. When the SBA does our audit, will it be an issue if we don't have copies of the backs of the checks? Images are just the front copies.

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Answer #23: Images are acceptable under Indiana Law but we require both the front and the back. If they will not provide you with the back then you may need to find another bank.

Question #24: Whats the latest on railroad property?

Answer #24: There has been nothing changed in this area that we are aware of. If this is regarding the assessing of railroad property then you need to contact the State Board of Tax Commissioners.

Question #25: On the detailed listing (form 13L) - why not just list line D in the first column instead of the last one? Inheritance Tax

Answer #25: You need to contact Bill Reynolds with the Department of Revenue to get the answer to this question.